

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Steven Hewitt,)	Civil Action No. 0:13-1436-MGL
)	
Plaintiff,)	
)	
v.)	
)	
Elizabeth Holcomb, <i>NP</i> ,)	<u>OPINION AND ORDER</u>
)	
Defendant.)	
_____)	

Plaintiff Steven Hewitt (“Plaintiff”), proceeding *pro se*, brought this action pursuant to Title 42, United States Code, Section 1983. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B), D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pre-trial handling and a Report and Recommendation (“Report”). On July 16, 2013, Defendant Elizabeth Holcomb, *NP* (“Defendant”), filed a motion to dismiss for failure to state a claim. (ECF No. 15.) Since Plaintiff is *pro se* in this matter, the Court entered an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975) on July 18, 2013, advising Plaintiff of the importance of a dispositive motion and of the need for him to file an adequate response. (ECF No. 22.) Plaintiff filed his opposition on August 8, 2013. (ECF No. 26.)

On August 14, 2013, Magistrate Judge Gossett issued a Report recommending that Defendant’s motion to dismiss be terminated in part as moot and denied to the extent it seeks dismissal under Rule 12(b)(6) of Hewitt’s § 1983 claim. (ECF No. 28.) The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the consequences if he failed to do so. (ECF No. 28 at 5.) Neither Plaintiff nor Defendant filed objections, and the time for doing so expired on September 3, 2013.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has

no presumptive weight, and the responsibility to make a final determination remains with the Court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The Court reviews the Report and Recommendation only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After reviewing the motion and response, the record, and the Report and Recommendation of the Magistrate Judge, the Court finds no clear error. Accordingly, the Court adopts and incorporates the Report and Recommendation (ECF No. 28) by reference into this order. It is therefore ORDERED that Defendants’ motion to dismiss for failure to state a claim is terminated in part as moot and denied to the extent it seeks dismissal under Rule 12(b)(6) of Hewitt’s § 1983 claim.

IT IS SO ORDERED.

/s/ Mary G. Lewis
United States District Judge

Spartanburg, South Carolina
September 23, 2013